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DEPARTMENT OF AGRICULTURE

# PATENT CIRCULAR

CONTAINING

1st. "THE COPYRIGHT ACT OF 1868."

2nd. "THE TRADE MARK AND DESIGN ACT  
OF 1868."

3rd. "THE PATENT ACT OF 1869."

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OTTAWA:  
PRINTED BY AUTHORITY.  
1869.

TIMES STEAM POWER WORKS,  
38 SPARKS-ST.,  
OTTAWA.



## An Act respecting Copyrights.

**H**ER Majesty, by and with the advice and consent of the Preamble.  
Senate and House of Commons of Canada, enacts as follows :

1. The Minister of Agriculture shall cause to be kept in his Office, a book to be called the "Register of Copyrights" in which proprietors of literary, scientific, and artistical works or compositions, may have the same registered in accordance with the provisions of this Act. Register of Copyrights.

2. The Minister of Agriculture may, from time to time, subject to the approval of the Governor in Council, make such rules and regulations, and prescribe such forms, as may appear to him necessary and expedient for the purposes of this Act; such regulations and forms being circulated in print for the use of the public shall be deemed to be correct for the purposes of this Act, and all documents, executed according the same and accepted by the said Minister of Agriculture, shall be held valid so far as relates to all official proceedings under this Act. Minister of Agriculture make rules, &c. Their effect.

3. Any person resident in Canada or any person being a British subject, and resident in Great Britain or Ireland, who is the author of any book, map, chart, or musical composition, or of any original painting, drawing, statuary, sculpture or photograph, or who invents, designs, etches, engraves or causes to be engraved, etched or made from his own design, any print or engraving, and the legal representatives of such persons, shall have the sole right and liberty of printing, reprinting, publishing, reproducing and vending such literary, scientific or artistical works or compositions, in whole or in part, and of allowing translations to be made of such literary works from one language into other languages, for the term of twenty-eight years, from the time of recording the title thereof in the manner hereinafter directed; but no immoral or licentious, treasonable or seditious book or any other such literary, scientific or artistical work or composition shall be the subject of such registration or Copyright. Who may have copyright in Canada. Proviso.

Renewal and  
continuation of  
copyright.

Condition.

Record of re-  
newal to be  
published.

Deposit of  
copies in the  
office of the  
Minister of  
Agriculture.

One to be sent  
to Library of  
Parliament.

Notice of copy-  
right to appear  
in work.

4. If at the expiration of the aforesaid term, such author, or any of the authors, where the work has been originally composed and made by more than one person, be still living, and residing in Canada or in Great Britain or Ireland, or being dead, has left a widow or a child, or children living, the same exclusive right shall be continued to such author, or if dead, then to such widow and child or children, (as the case may be) for the further time of fourteen years; but in such case within one year after the expiration of the first term, the title of the work secured shall be a second time recorded, and all other regulations herein required to be observed in regard to original Copyrights shall be complied with in respect to such renewed Copyrights.

5. In all cases of renewal of Copyright under this Act, the author or proprietor shall, within two months from the date of such renewal, cause a copy of the record thereof to be published once in the *Canada Gazette*.

6. No person shall be entitled to the benefit of this Act, unless he has deposited in the Office of the Minister of Agriculture two copies of such book, map, chart, musical composition, photograph, print, cut, or engraving, and in case of paintings, drawings, statuary and sculptures, unless he has furnished a written description of such works of art, and the Minister of Agriculture shall cause the same to be recorded forthwith in a book to be kept for that purpose, in the manner prescribed by the rules and forms which may be made, from time to time, as herebefore provided, for which record the person claiming such right as aforesaid, shall pay into the hands of the Minister of Agriculture one dollar, and the like sum for every copy actually given to such person or his legal representatives, and the sums so paid shall be paid over to the Receiver General to form part of the Consolidated Revenue of Canada.

7. The Minister of Agriculture shall cause one of the two copies of such book, map, chart, musical composition, photograph, print, cut or engraving aforesaid, to be deposited in the Library of the Parliament of Canada.

8. No Person shall be entitled to the benefit of this Act, unless he gives information of the Copyright being secured, by causing to be inserted in the several copies of every edition published during the term secured, on the title page, or the page immediately following, if it be a book, or if a map, chart, musical composition, print, cut, engraving or photograph, by causing to be impressed on the face thereof, or if a volume of maps, charts, music or engravings, upon the title or frontispiece thereof, the following words, that is to

say: "Entered according to Act of Parliament of Canada, "in the year \_\_\_\_\_ by A. B., in "the Office of the Minister of Agriculture." But as regards Exception. paintings, drawings, statuary and sculptures, the signature of the artist shall be deemed a sufficient notice of such proprietorship.

9. To entitle any such literary production or engraving as is in this Act mentioned, being the work of any such person residing in Great Britain or Ireland, to the protection of this Act, the same shall be printed and published in Canada, and shall, in addition to the words directed to be inserted by the last section of this Act, and immediately following thereafter, contain the name and place of abode or business in Canada of the printer and publisher thereof. Publication in Canada required.

10. If any other person, after the recording of the title of any book according to this Act, within the term or terms herein limited, prints publishes or imports, or causes to be printed, published or imported, any copy or any translation of such book without the consent of the person legally entitled to the Copyright thereof, first had and obtained by deed duly executed, or, knowing the same to be so printed or imported, publishes, sells, or exposes to sale or causes to be published, sold or exposed to sale any copy of such book without such consent in writing, such offender shall forfeit every copy of such book to the person then legally entitled to the Copyright thereof; and shall forfeit and pay two dollars, for every such copy which may be found in his possession, either printed or printing, published imported or exposed to sale, contrary to the intent of this Act; of which penalty one moiety shall be to the use of Her Majesty, and the other to the legal owner of such Copyright, to be recovered in any Court of competent jurisdiction. Penalty for infringement of copyright of books.

11. If any person, after the recording of any painting, drawing, statuary or sculpture work, within the term or terms limited by this Act, reproduces in any manner or causes to be reproduced, made or sold, in part or in the whole, copies of the said works of arts, without the consent of the proprietor or proprietors, such offender or offenders shall forfeit the plate or plates on which such reproduction has been made, and also every sheet thereof so copied, printed or photographed to the proprietor or proprietors of the Copyright thereof and shall further forfeit two dollars for every sheet of the same reproduction so published or exposed to sale contrary to the true intent and meaning of this Act; and one moiety of such forfeiture shall go to the Proprietor or Proprietors and the other moiety to the use of Her Majesty, and such forfeiture may be recovered in any Court of competent jurisdiction. Penalty for infringement of copyright of painting, &c.

Penalty for  
infringement of  
copyright of  
print, &c.

**12.** If any person after the recording of the title of any print, cut or engraving, map, chart, musical composition or photograph, according to the provisions of this Act, within the term or terms limited by this Act, engraves, etches or works, sells or copies, or causes to be engraved, etched or copied, made or sold, either in the whole or by varying, adding to or diminishing the main design, with intent to evade the Law, or prints or imports for sale, or causes to be printed or imported for sale, any such map, chart, musical composition, print, cut or engraving, or any parts thereof, without the consent of the proprietor or proprietors of the Copyright thereof, first obtained as aforesaid, or knowing the same to be so printed or imported without such consent, publishes sells or exposes to sale, or in any manner disposes of any such map, chart musical composition engraving, cut, photograph or print, without such consent, as aforesaid, such offender or offenders shall forfeit the plate or plates on which such map, chart, musical composition, engraving, cut, photograph or print, has been copied, and also every sheet thereof, so copied or printed as aforesaid, to the proprietor or proprietors of the Copyright thereof, and shall further forfeit two dollars for every sheet of such map, musical composition, print, cut or engraving, which may be found in his or their possession, printed or published, or exposed to sale, contrary to the true intent and meaning of this Act; and one moiety of such forfeiture shall go to the proprietor or proprietors, and the other moiety to the use of Her Majesty, and such forfeiture may be recovered in any Court of competent jurisdiction.

Temporary  
registration to  
secure copy-  
right.

**13.** A literary work, intended to be published in pamphlet or book form, but which is first published in separate articles in a newspaper or periodical may be the subject of registration within the meaning of the present Act, while it is so preliminarily published, provided that the title of the manuscript and a short analysis of the work are deposited in the Office of the Minister of Agriculture, the registration fee be duly paid and that every separate article so published is preceded by the words "Registered in accordance with the Copyright of 1868"; but the work when published in book or pamphlet form, shall be subject, besides, to the other requirements of this Act.

No copyright  
of any scene or  
object.

**14.** Nothing herein contained, however, shall prejudice the right of any person to represent any scene or object, notwithstanding that there may be Copyright in some other representation of such scene or object.

Copyright of  
work made to  
order, &c.

**15.** Whenever the author of a literary, scientific or artistic work or composition which may be the subject of

Copyright has executed the same for another person or has sold the same to another person for due consideration, such author shall not be entitled to obtain or to retain the proprietorship of such Copyright, which is by the said transaction virtually transferred to the purchaser who may avail himself of such privilege, unless a reserve of the said privilege is specially made by the author or artist in a deed duly executed.

16. If any person prints or publishes any manuscript what-  
ever in Canada, or the same having been printed or published elsewhere, offers it or causes it to be offered for sale in Canada, without the consent of the author or legal proprietor first obtained, such author or proprietor being resident in Canada, or being a British subject resident in Great Britain or Ireland, such person shall be liable to the author or proprietor for all damages occasioned by such injury, to be recovered in any Court of competent jurisdiction.

Damages for infringement of copyright.

17. If any person prints, publishes or reproduces any book, map, chart, musical composition, print, cut or engraving, or other work of art or photograph and not having legally acquired the Copyright thereof, inserts therein, or impresses thereon, that the same hath been entered according to this Act, or words purporting the same, every person so offending, shall incur a penalty not exceeding sixty dollars (one moiety thereof to the person who sues for the same, and the other moiety to the use of Her Majesty,) to be recovered in any Court of competent jurisdiction.

Penalty for falsely pretending to have copyright.

18. No action or prosecution for the recovery of any penalty under this Act, shall be commenced more than two years after the cause of action arose.

Limitation of actions.

19. Chapter eighty-one of the Consolidated Statutes of the late Province of Canada, and chapter one hundred and sixteen of the Revised Statutes of Nova Scotia, (third series), and all other Acts or parts of Acts, inconsistent with the provisions of the present Act, are hereby repealed, subject to the provisions of the next section.

Repeal of former Acts.

20. All Copyrights heretofore acquired under the Acts or parts of Acts hereby repealed, shall, in respect of the unexpired terms thereof, continue unimpaired, and shall have the same force and effect as regards the Province or Provinces to which they now extend and shall be assignable and renewable, and all penalties and forfeitures incurred and to be incurred under the same may be sued for and enforced, and all prosecutions commenced before the passing of this Act for any such penalties or forfeitures already incurred may be continued and completed as if such Acts were not repealed.

Unexpired copyrights continued.

21. In citing this Act it shall be sufficient to call it "The Short title. Copyright Act of 1868."





## An Act respecting Trade Marks and Industrial Designs.

**H**ER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :

1. The Minister of Agriculture shall cause to be kept in his office books to be denominated respectively the "Trade Mark Register," and "The Register of Industrial Designs," in which any proprietor of a Trade Mark or of a Design may have the same registered by depositing with the said Minister a drawing and description in duplicate of such Trade Mark or Design, together with a declaration that the same was not in use to his knowledge by any other person than himself at the time of his adoption thereof; and the said Minister of Agriculture, on receipt of the fee hereinafter provided shall cause the said Trade Mark or Design to be examined; to ascertain whether it resembles any other Trade Mark or Design already registered; and if he find that such Trade Mark or Design is not identical with or does not so closely resemble as to be confounded with any other Trade Mark or Design already registered, he shall register the same, and shall return to the proprietor thereof one copy of the drawing and description, with a certificate signed by the Minister or his Deputy to the effect, that the said Trade Mark or Design has been duly registered in accordance with the provisions of this Act; and there shall be further stated in such certificate the day, month and year of the entry thereof, in the proper Register; and every such certificate shall be received in all Courts of Law or of Equity in Canada, as evidence of the facts therein alleged, without proof of the signature.

Minister of Agriculture to register trade marks and industrial designs and grant certificates on certain conditions.

2. The Minister of Agriculture may, from time to time, subject to the approval of the Governor in Council, make such rules and regulations and adopt forms for the purposes of this Act, and such rules, regulations and forms circulated in print for the use of the public, shall be deemed to be correct for the purposes of this Act, and all documents

Minister may make rules and adopt forms.

executed according to the same and accepted by the Minister of Agriculture shall be held valid so far as relates to the official proceedings under this Act.

#### TRADE MARKS.

What shall be deemed trade marks.

**3.** For the purposes of this Act, all marks, names, brands, labels, packages or other business devices, which may be adopted for use by any person in his trade, business, occupation or calling, for the purpose of distinguishing any manufacture, product or article of any description by him manufactured, produced, compounded, packed or offered for sale, no matter how applied, whether to such manufacture, product or article, or to any package, parcel, case, box or other vessel or receptacle of any description whatever containing the same, shall be considered and known as Trade Marks, and may be registered for the exclusive use of the party registering the same in the manner hereinafter provided; and thereafter he shall have the exclusive right to use the same, to designate articles manufactured or sold by him, and for the purposes of this Act, timber and lumber of any kind upon which labor has been expended by any person in his trade, business, occupation or calling shall be deemed a manufacture, product or article.

Exclusive right to use registered mark.

Trade marks may be cancelled.

**4.** Any person having registered a Trade Mark may petition for the cancellation of the same, and the Minister of Agriculture may cause, on receiving such petition, the said Trade Mark to be so cancelled; and the same shall after such cancellation be considered as if it had never been registered under the name of the said party.

Registered trade marks assignable.

**5.** Every Trade Mark registered in the office of the Minister of Agriculture shall be assignable in law, and on the assignment being produced and the fee hereinafter provided being paid, the Minister of Agriculture shall cause the name of the assignee, with the date of the assignment and such other details as he may see fit, to be entered on the margin of the Register of Trade Marks on the folio where such Trade Mark is registered.

Conflicting claims to a trade mark how to be dealt with.

**6.** If any person shall make application to register, as his own, any trade mark, which has been already registered, the Minister of Agriculture shall cause all parties interested therein to be notified to appear, in person or by Attorney, before him, with their witnesses, for the purpose of establishing which is the rightful owner of such trade mark, and after having heard the parties and their witnesses, the said Minister shall order such entry or cancellation, or both, to be made as he shall deem just; in the absence of the said

Minister, his Deputy may hear and determine the case and make such entry or cancellation or both, as to right and justice may appertain, and, similarly, any error in Registering Trade Marks or any oversight about conflicting registrations of Trade Marks may be settled in the same manner.

7. If any person, other than the party who has registered the same, shall mark any goods or any article of any description whatever with any trade mark registered under the provisions of this Act, or with any part of such trade mark, whether by applying such trade mark or any part thereof to the article itself or to any package or thing containing such article, or by using any package or thing so marked which has been used by the proprietor of such trade mark, or shall knowingly sell or offer for sale any article marked with such trade mark, or with any part thereof, with intent to deceive and to induce persons to believe that such article was manufactured, produced, compounded, packed or sold by the proprietor of such trade mark, he shall be guilty of a misdemeanor, and, on conviction thereof, shall forfeit, for each offence, a sum of not less than twenty dollars and not exceeding one hundred dollars, which amount shall be paid to the proprietor of such trade mark, together with the costs incurred in enforcing and recovering the same; Provided, always, that every complaint under this section shall be made by the proprietor of such trade mark, or by some one acting on his behalf and duly authorized thereto.

Penalty for using another person's trade mark.

Proviso.

8. If any person shall knowingly and wilfully register as his own any trade mark, the property of a person not resident in Canada, he shall be guilty of a misdemeanor, and shall be subject and liable to the penalty mentioned in the preceding section; And the entry of every such trade mark in the Trade Marks Register, shall be cancelled on receipt of a certificate signed by the Clerk of the Court, or the Justices of the Peace before whom the conviction was had, of any such conviction; and one-half of every such penalty shall be paid to the party prosecuting, and the other half to the Crown.

Penalty for registering another's trade mark as your own.

9. If any person shall counterfeit or use the trade mark of any person, not resident in Canada, with intent to deceive the public and lead to the belief that the articles or packages so marked were manufactured or put up by the owner of such trade mark, although the same is not registered in Canada, he shall on conviction thereof, forfeit a sum of not less than ten dollars nor more than fifty dollars for each offence, with costs, one-half of which penalty shall be paid to the complainant and the other half to the Crown.

Penalty for using trade marks of persons not resident in Canada.

Recovery of penalties.

**10.** Complaints under either of the two next preceding sections may be brought by any party or person whatever, and the penalties mentioned in the three next preceding sections shall be enforced and recovered in the same manner, and subject to the same provisions as are provided in the sections of this Act respecting the registration and protection of designs.

Close imitation  
of trade mark  
forbidden.

**11.** The use of any trade mark either identical with that of any manufacturer, producer, packer, or vender, or so closely resembling it as to be calculated to be taken for it by ordinary purchasers, shall be held to be a use of such trade mark.

Action for dam-  
ages for using  
trade mark.

**12.** Notwithstanding anything in the preceding sections contained, a suit may be maintained by any proprietor of a trade mark against any person using his registered trade mark, or any fraudulent imitation thereof, or selling articles bearing such trade mark, or any such imitation thereof, or contained in packages being or purporting to be his, contrary to the provisions of this Act.

#### REGISTRATION OF DESIGNS.

Copyright of  
registered de-  
sign.

**13.** The Copyright acquired for an industrial design by the Registration of the same as aforesaid shall be valid for the term of five years.

Registration of  
design, how  
made.

**14.** Every design to be protected must be registered before publication; and, after Registration, the name of the proprietor, who must be a resident of Canada, shall appear upon the article to which his design applies; if the manufacture be a woven fabric, by printing upon one end; if another substance, at the edge or upon any convenient parts, the letters Rd., with the mention of the year of the Registration; the mark may be put upon the manufacture by making it on the material itself, or by attaching thereto a label containing the proper marks.

Proprietor of  
design.

**15.** The author of the design shall be considered the proprietor thereof, unless he has executed the design for another person, for a good or valuable consideration, in which case such other person shall be considered the proprietor, and shall alone be entitled to register it; but his right to the property shall only be co-extensive with the right which he may have acquired.

Designs assign-  
able in law.

**16.** Every design shall be assignable in law, either as to the whole interest or any undivided part thereof, by an instrument in writing, which assignment shall be recorded in

the office of the Minister of Agriculture, on payment of the fees hereinafter provided; And every proprietor of a design may grant and convey an exclusive right, under any copyright, to make, use and vend, and to grant to others to make use and vend such design within and throughout Canada or any part thereof, for the unexpired term thereof or any part thereof; which exclusive grant and conveyance shall be called a license, and shall be recorded in the same manner and within the same delay as assignments.

**17.** During the existence of the right (whether it be of the entire or partial use of such design,) no person shall, without the license in writing of the registered proprietor, apply such design, or a fraudulent imitation thereof, to the ornamenting of any article of manufacture, &c., for the purposes of sale, or publish, sell or expose for sale or use any article of manufacture, &c., to which such design, or fraudulent imitation thereof shall have been applied, under penalty of not less than twenty dollars, and not exceeding one hundred and twenty dollars, to the proprietor of the design, and costs—to be recovered by the registered proprietor, or his assignee, by suit in any Court, having jurisdiction in suits of a like amount.

No person to use a registered design without license.

Penalty for contravention.

**18.** Every person placing the words "registered," or the letters "Rd.," upon any unregistered article, or upon any article the copyright of which has run out, or advertising the same for sale as a registered article, or unlawfully selling, publishing, or exposing for sale such article, knowing the same to have been fraudulently stamped or that the copyright thereof has expired, shall forfeit for every offence a sum not less than four dollars and not exceeding thirty dollars, to be recovered in the same manner as penalties under the next preceding section, and that by any person whatever, who shall receive one half the amount of the said last mentioned penalty, on the recovery of the amount which the offender may have been condemned to pay.

Penalty for marking an unregistered article as registered.

**19.** A suit may be maintained by the proprietor of any design for the damages he has sustained by the application or imitation of the design, for the purpose of sale, against any person so offending, he (the offender) knowing that the proprietor of the design had not given his consent to such application.

Action of damages for using design without license.

**20.** If any person, not being the lawful proprietor of a design, be registered as proprietor thereof, the rightful owner may institute an action in the Superior Court in the Province of Quebec, in the Court of Queen's Bench in the Provinces of Ontario, and in the Supreme Court in the Pro-

How the true proprietor may proceed against person having fraudulently registered a design as his own.

vinces of Nova Scotia or New Brunswick as the case may be, and the Court having cognizance of such suit may, if it appear that the design has been registered in the name of a wrong person, either direct the registration to be cancelled, or that the name of the lawful proprietor shall be substituted for the name in the register, with costs in its discretion, and on application by the Plaintiff supported by affidavit, it shall be lawful for any such Court, pending such action or proceedings, at its discretion, to issue an order upon the defendant prohibiting the use of such design, pending such suit or proceedings, under pain of being held in contempt of such Court.

Alteration in  
register on  
order of court.

21. The Minister of Agriculture, after due service of such order and payment of the fee hereinafter provided, shall cause such alteration to be made in the Register as shall in said order be directed.

Limitation of  
actions.

22. All proceedings, under the preceding sections of this Act, shall be brought within twelve months from the commission of the offence, and not after; nor shall any of the clauses of this Act apply to protect any design which does not belong to a person resident within Canada and is not applied to a subject matter manufactured in Canada.

Certificate on  
copy returned  
to the owner.

23. On the copy returned to the person registering, a certificate shall be given, signed by the Minister or by his Deputy, that the Design has been registered, the date of registration, the name of the registered proprietor, his address, the number of such design, and the number or letter employed to denote or correspond with the registration, which said certificate, in the absence of proof to the contrary, shall be sufficient proof of the design, of the name of the proprietor, of the registration of the commencement and period of registry, of the person named as proprietor being proprietor, of the originality of the design, and of compliance with the provisions of this Act; and generally the writing so signed shall be received as evidence of the facts therein stated, without proof of the signature.

Its effect.

#### GENERAL PROVISIONS.

Inspection of  
registers.

24. Any person may be allowed to inspect the Register of Trade Marks and the Register of Industrial Designs; and the Minister may cause copies or representations of Trade Marks or Industrial Designs to be delivered, on the applicant for the same paying the fee which shall be deemed sufficient for the purpose of having the same copied or represented.

**25.** The Minister of Agriculture shall have power to refuse to register such designs as do not appear to him to be within the provisions of this Act, or when the design is contrary to public morality or order, subject, however, to appeal to the Governor in Council.

Minister may refuse to register certain designs.

**26.** The Minister of Agriculture shall, from time to time, cause to be published in the *Canada Gazette* the titles of the designs registered and the names and places of abode of the registered proprietors.

Publication of titles of design.

**27.** Clerical errors happening in the drawing up or copying of any instrument, shall not be construed as invalidating the same, but when discovered they may be corrected under the authority of the Minister of Agriculture.

Clerical errors not to invalidate.

**28.** The following fees shall be payable, to wit :

Table of Fees.

On every application to register a design or trade mark, including certificate.....	\$5.00
For each certificate of registration not already provided for.....	1.00
For each copy of any drawing, the reasonable expenses of preparing the same.	
For recording any assignment.....	2.00

For office copies of Documents or entries, not above mentioned, the following charges shall be exacted :

For every single or first folio.....	\$0.50
For every subsequent hundred words, (fractions from and under fifty being not counted, and over fifty being counted for one hundred).....	0.25

All of which fees shall be paid over by the Minister of Agriculture to the Receiver General of Canada.

How applied.

**29.** The Act twenty-fourth Victoria, chapter twenty-first of the Statutes of the late Province of Canada, and the thirtieth Victoria, chapter thirty-first of the Province of New Brunswick, and all other Acts or parts of Acts inconsistent with the present Act are hereby repealed as to any further registration or the granting of any new exclusive right under the provisions thereof; but all rights heretofore acquired by virtue of such provisions shall remain good and valid and assignable in law, and all penalties and forfeitures incurred or to be incurred under the same may be sued for and enforced, and all prosecutions commenced before the passing of this Act for any such penalties or forfeitures already in-

Repeal of former Acts.

Rights acquired under repealed Acts saved.

curred may be continued and completed, and entries and registrations under the said Acts respectively may be cancelled, as if the said Acts and parts of Acts had not been repealed.

Deputy Minister substituted for Secretary of Registration and Statistics.

**30.** For all the purposes of the Act of Canada cited in the next preceding section of this Act, so far as the same remains in force after the passing of this Act, the Deputy of the Minister of Agriculture shall be and is hereby substituted for the Secretary of the Board of Registration and Statistics mentioned in the said Act, and shall have all the powers and duties of these officers.

Short title.

**31.** In citing this Act it shall be sufficient to call it "The Trade Mark and Design Act of 1868."



## An Act respecting Patents of Invention.

**H**ER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows: Preamble.

### PATENT OFFICE CONSTITUTED.

1. There shall be attached to the Department of Agriculture, as a branch thereof, an Office to be named The Patent Office; and the Minister of Agriculture for the time being shall be the Commissioner of Patents of Invention; and it shall be the duty of the said Commissioner to receive all applications, fees, papers, documents and models for patents, and to perform such acts and things respecting the granting and issuing of patents for new and useful inventions, discoveries, and improvements as are herein provided for; and he shall have the charge and custody of the books, records, papers, models, machines, and other things belonging to the said Office.

Minister of Agriculture to be Commissioner of Patents of Invention.

2. The Commissioner shall cause a seal to be made for the purposes of this Act, and may cause to be sealed therewith letters patent and other instruments and copies proceeding from the Patent Office; and all Courts, Judges, and other persons whomsoever shall take notice of such seal, and receive impressions thereof in evidence, in like manner as impressions of the Great Seal are received in evidence, and shall also take notice of and receive in evidence, without further proof and without production of the originals, all copies or extracts certified under the seal of the said Office to be copies of or extracts from documents deposited in such office.

Seal to be made and impressions thereof to be received in evidence.

3. The Commissioner may, from time to time, subject to the approval of the Governor in Council, make such rules and regulations, and prescribe such forms, as may appear to him necessary and expedient for the purposes of this Act, and notice thereof shall be given in the *Canada Gazette*;

Commissioner to make rules &c.

and all documents, executed after the same and accepted by the Commissioner, shall be held valid so far as relating to proceedings in the Patent Office.

Deputy Commissioner of Patents of Invention.

4. The Deputy of the Minister of Agriculture shall be the Deputy Commissioner of Patents of Invention; and the Governor may, from time to time, appoint such clerks and officers under him as may be necessary for the purpose of this Act, and such clerks and officers shall hold office during pleasure.

Annual report and list of Patents.

5. The Commissioner shall cause a report to be prepared annually and laid before Parliament of the proceedings under this Act, and shall from time to time and at least once in a year, publish in the *Canada Gazette* a list of Patents granted, and may, with the approval of the Governor in Council, cause such specifications and drawings as may be deemed of interest, or essential parts thereof, to be printed from time to time for distribution or sale.

#### WHO MAY OBTAIN PATENTS.

Residents of Canada may obtain Patents for their own discoveries and inventions.

6. Any person having been a resident of Canada for at least one year next before his application, and having invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvement on any art, machine, manufacture or composition of matter, not known or used by others before his invention or discovery thereof, or not being at the time of his application for a patent in public use or on sale in any of the Provinces of the Dominion with the consent or allowance of the inventor or discoverer thereof may, on a petition to that effect presented to the Commissioner and on compliance with the other requirements of this Act, obtain a Patent granting to such person an exclusive property therein; and the said Patent shall be under the seal of the Patent Office and the signature of the Commissioner, or the signature of another member of the Privy Council, and shall be good and avail to the grantee, his heirs, assigns or other legal representatives, for the period mentioned in such Patent; but no Patent shall issue for an invention or discovery having an illicit object in view nor for any mere scientific principle or abstract theorem.

Of foreign patent to said inventor.

7. An original and true inventor or discoverer shall not be deprived of the right to a Patent for his invention or discovery by reason of his having, previously to his application, taken out a Patent therefor in any other country, at any time within six months next preceding the filing of his specification and drawing as required by this Act.

8. The Patent may be granted to any person to whom the inventor or discoverer entitled under the sixth section to obtain a Patent has assigned or bequeathed the right of obtaining the same, and the exclusive property in the invention or discovery in Canada, or in default of such assignment or bequest, to the executor or administrator of the deceased inventor or discoverer, or other legal representative.

Representative of inventor may obtain patent.

9. Any person, having been a resident of Canada for at least one year next before his application; and who has invented or discovered any improvement on any Patented invention or discovery, may obtain a Patent for such improvement, but shall not thereby obtain the right of vending or using the original invention or discovery, nor shall the Patent for the original invention or discovery confer the right of vending or using the patented improvement.

Of patent for improvement on patented invention.

10. In cases of joint applications, the Patent shall be granted in the names of all the applicants; and in such cases, any assignment from one of the said applicants or patentees to the other shall be registered in the manner of other assignments.

Of joint applicants for patent.

# CONDITIONS AND FORMALITIES.

11. Every applicant for a Patent, before he can obtain the same, shall make oath or when entitled by law to make an affirmation instead of an oath, shall make an affirmation that he verily believes that he is, or that the person whose assignee or representative he is, is or was the true inventor, or discoverer of the invention or discovery for which the Patent is solicited, and that he, or the person whose assignee or representative he is, was a resident of Canada for one year next before the application, or in case of death of the inventor or discoverer, for one year next before such death. Such oath or affirmation may be made before any Justice of the Peace in Canada; but if the applicant is not at the time in Canada, the oath or affirmation may be made before any Minister Plenipotentiary, *charge d'affaires*, consul or consular agent, holding commission under the Government of the United Kingdom, or any Judge of the Country in which the applicant happens at the time to be.

Declaration to be made by applicant for patent.

12. The Petitioner for a Patent shall for all the purposes of this Act elect his domicile at some known and specified place in Canada, and mention the same in his Petition for a Patent, and he shall in the same petition state the place or places in Canada at which he, or if his application be as assignee or representative, the person whose assignee or

Petitioner to elect domicile in Canada.

representative he is, was resident during the year of residence required by this Act, and the period of residence at each such place.

Contents, &c.,  
of application  
for patent.

**13.** The applicant shall, in his petition for a Patent, insert the title or name of his invention or discovery, its object and a short description of the same, and shall distinctly allege all the facts which are necessary under this Act to entitle him to a Patent therefor, and shall, with the petition, send in a written specification, in duplicate, of his invention or discovery, describing the same in such full, clear and exact terms, as to distinguish it from all contrivances or processes for similar purposes.

Specification  
and drawing.

**14.** The specification shall correctly and fully describe the mode or modes of operating contemplated by the applicant,—and shall state clearly and distinctly the contrivances and things which he claims as new and for the use of which he claims an exclusive property and privilege;—it shall bear the name of the place where it is made, the date, and be signed by the applicant and two witnesses;—in the case of a machine the specification shall fully explain the principle and the several modes in which it is intended to apply and work out the same; in the case of a machine or in any other case where the invention or discovery admits of illustration by means of drawings, the applicant shall also, with his application, send in drawings in duplicate showing clearly all parts of the invention or discovery; and each drawing shall bear the name of the inventor or discoverer and shall have written references corresponding with the specification, and a certificate of the applicant that it is the drawing referred to in the specification; but the Commissioner may require any greater number of drawings than those above mentioned, or dispense with any of them, as he may see fit; one duplicate of the specification and of the drawings, if any drawings, shall be annexed to the Patent, of which it forms an essential part and the other duplicate shall remain deposited in the Patent Office.

Working  
model.

**15.** The applicant shall also deliver to the Commissioner, unless specially dispensed from so doing for some good reason, a neat working model of his invention or discovery on a convenient scale, exhibiting its several parts in due proportion, whenever the invention or discovery admits of such model; and shall deliver to the Commissioner specimens of the ingredients, and of the composition of matter sufficient in quantity for the purpose of experiment, whenever the invention is a composition of matter; provided such ingredients and composition are not of an explosive character or otherwise dangerous, in which case

they are to be furnished only when specially required by the Commissioner, and then with such precautions as shall be prescribed in the said requisition.

CONTENTS, DURATION, SURRENDER, RE-ISSUE OF PATENTS  
AND DISCLAIMERS.

**16.** Every Patent granted under this Act shall recite briefly the substance of the petition on which it is granted, and shall contain the title or name of the invention or discovery and a short description of the same, referring for a fuller detail to the specification,—and shall grant to the Patentee, his assigns and legal representatives, or in trust as the case may be, for the period therein mentioned from the granting of the same, the exclusive right, privilege and liberty of making, constructing and using, and vending to others to be used, the said invention or discovery,—and shall contain a condition that it is nevertheless subject to adjudication before any Court of competent jurisdiction.

Contents of patents.

**17.** Patents of invention or discovery issued by the Patent Office shall be valid for a period of five years; but at or before the expiration of the said five years, the holder thereof may obtain an extension of the Patent for another period of five years, and after those second five years, may again obtain a further extension for another period of five years; and the instrument delivered by the Patent Office for such extension of time shall be in the form which may be from time to time adopted, and shall be made in duplicate, one duplicate to remain of record and be duly registered, and the other to be attached, with reference, to the Patent, under the seal of the Patent Office, and signature of the Commissioner, or any other Privy Councillor in case of absence of the Commissioner.

Duration of patents.

**18.** Every such patent, and every instrument for granting a further extension of any Patent shall, before it is signed by the Commissioner or any other member of the Privy Council and before the seal hereinbefore mentioned is affixed to it, be examined by the Minister of Justice, who, if he finds it conformable to law, shall certify accordingly, and such Patent or instrument may then be signed and the seal affixed thereto, and being duly registered, shall avail to the grantee thereof and be delivered to him.

Certificate of the Minister of Justice.

**19.** Whenever any Patent shall be deemed defective or inoperative by reason of insufficient description or specification, or by reason of the patentee claiming more than he had a right to claim as new, but at the same time it appears that the error arose from inadvertence, accident or mistake, with-

In case of error the Commissioners may cause a new patent to be issued.

out any fraudulent or deceptive intention, the Commissioner may, upon the surrender of such patent and the payment of the further fee hereinafter provided, cause a new patent in accordance with an amended description and specification to be made by such patentee, to be issued to him for the same invention or discovery, for any part or the whole of the then unexpired residue of the five years period for which the original patent was or might have been, as hereinbefore directed, granted;—In case of the death of the original patentee or of his having assigned the patent, a like right shall vest in his assignee, or legal representative: The new patent, and the amended description and specification, shall have the same effect in law, on the trial of any action thereafter commenced for any cause subsequently accruing, as if the same had been originally filed in such corrected form before the issue of the original patent.

Patentee may  
make dis-  
claimer.

20. Similarly, whenever by any mistake, accident or inadvertence and without any wilful intent to defraud or mislead the public a Patentee has made his specification too broad, claiming more than that of which he or the party through whom he claims was the first inventor or discoverer, or has in the specification claimed that he or the party through whom he claims was the first inventor or discoverer of any material or substantial part of the invention or discovery patented of which he was not the first inventor or discoverer, and had no legal right thereto;—the patentee may, on payment of the fee hereinafter provided, make disclaimer of such parts as he shall not claim to hold by virtue of the patent or the assignment thereof;—such disclaimer shall be in writing, and in duplicate, and attested in the manner hereinbefore prescribed for a patent, one copy to be filed and recorded in the office of the Commissioner, the other copy to be attached to the Patent and made a part thereof by reference, and such disclaimer shall thereafter be taken and considered as part of the original specification. Such disclaimer shall not affect any action pending at the time of its being made, except in so far as may relate to the question of unreasonable neglect or delay in making it. In case of the death of the original Patentee or of his having assigned the Patent, a like right shall vest in his assigns or legal representatives respectively, any of whom may make disclaimer. The Patent shall thereafter be deemed good and valid for so much of the invention or discovery as is truly the disclaimant's own, and not disclaimed, provided it be a material and substantial part of the invention or discovery, and definitely distinguished from other parts claimed without right; and the disclaimant shall be entitled to maintain a suit for such part accordingly.

ASSIGNMENT AND INFRINGEMENT OF PATENTS.

**21.** The Government of Canada may always use any patented invention or discovery, paying to the patentee such sum as the Commissioner may report to be a reasonable compensation for the use thereof.

Government may use any patented invention.

**22.** Every Patent for an invention or discovery whensoever issued shall be assignable in law either as to the whole interest or as to any part thereof, by any instrument in writing; but such assignment, and also every grant and conveyance of any exclusive right to make and use and to grant to others the right to make and use the invention or discovery patented within and throughout the Dominion of Canada, or within and throughout any one or more of the Provinces of Ontario, Quebec, Nova Scotia or New Brunswick, or any part of any of such Provinces or of the Dominion, shall be registered in the Office of the Commissioner; and every assignment affecting a Patent for invention or discovery shall be deemed null and void against any subsequent assignee unless such instrument is registered as hereinbefore prescribed, before the registering of the instrument under which such subsequent assignee may claim.

Patents to be assignable. Assignments to be registered.

**23.** Every person who, without the consent in writing of the Patentee, makes, constructs or puts in practice any invention or discovery for which a Patent has been obtained under this Act or procures such invention or discovery from any person not authorized to make or use it by the Patentee, and uses it, shall be liable to the Patentee in an action of damages for so doing; — and the judgment shall be enforced, and the damages, and costs as may be adjudged, shall be recovered in like manner as in other cases in the Court in which the action is brought.

Penalty for infringement of patent.

**24.** An action for the infringement of a Patent may be brought before any Court of Record having jurisdiction to the amount of damages asked for and having its sittings within the Province in which the infringement is said to have taken place, and being at the same time, of the Courts of such jurisdiction within such Province, the one of which the place of holding is nearest to the place of residence or of business of the defendant; and such Court shall decide the case and determine as to costs. In any action for the infringement of a Patent, the Court if sitting, or any Judge thereof in Chambers if the Court be not sitting may, on the application of the plaintiff or defendant respectively, make such order for an injunction, restraining the opposite party from further use, manufacture or sale of the subject matter of the patent, and for his punishment in the event of diso-

Action for infringement of patent.

bedience to such order ; or for inspection or account, and respecting the same and the proceedings in the action, as the Court or Judge may see fit ;—but from such order an appeal shall lie under the same circumstances and to the same Court, as from other judgments or orders of the Court in which the order was made.

Court may discriminate in certain cases.

**25.** Whenever the plaintiff fails to sustain his action, because his specification and claim embrace more than that of which he was the first inventor or discoverer, and it appears that the defendant used or infringed any part of the invention or discovery justly and truly specified and claimed as new, the Court may discriminate, and the judgment may be rendered accordingly.

Defence in such cases.

**26.** The defendant in any such action may specially plead as matter of defence any fact or default which by this Act or by law would render the Patent void ; and the Court shall take cognizance of that special pleading and of the facts connected therewith, and shall decide the case accordingly.

#### NULLITY, IMPEACHMENT AND VOIDANCE OF PATENTS.

Patent to be void in certain cases or only valid for part.

**27.** A Patent shall be void, if any material allegation in the petition or declaration of the applicant be untrue, or if the specification and drawings contain more or less than is necessary for obtaining the end for which they purport to be made, such omission or addition being wilfully made for the purpose of misleading ; but if it shall appear to the Court that such omission or addition is simply an involuntary error, and it is proved that the Patentee is entitled to the remainder of his Patent *pro tanto*, the Court shall render a judgment in accordance with the facts, and determine as to costs, and the Patent shall be held valid for such part of the invention described, and two office copies of such judgment shall be furnished to the Patent Office by the Patentee, one to be registered and to remain of record in the office, and the other to be attached to the Patent and made a part of it by a reference.

Patents to be conditioned on manufacture in Canada of thing patented.

**28.** Every Patent granted under this Act shall be subject and expressed to be subject to the condition that such Patent and all the rights and privileges thereby granted shall cease and determine and the Patent shall be null and void, at the end of three years from the date thereof, unless the Patentee shall, within that period, have commenced and shall after such commencement carry on in Canada the construction or manufacture of the invention or discovery

patented, in such manner that any person desiring to use it may obtain it or cause it to be made for him at a reasonable price at some manufactory or establishment for making or constructing it, in Canada, and that such patent shall be void if after the expiration of eighteen months from the granting thereof the patentee or his assignee or assignees for the whole or a part of his interest in the Patent, imports or causes to be imported into Canada, the invention or discovery for which the Patent is granted.

**29.** Any person desiring to impeach any Patent issued under this Act, may obtain a sealed and certified copy of the Patent and of the petition, declaration, drawings and specification thereunto relating, and may have the same filed in the Office of the Prothonotary or Clerk of the Superior Court for the Province of Quebec, or of the Court of Queen's Bench or Common Pleas for the Province of Ontario, or of the Supreme Court in the Province of Nova Scotia, or of the Court of Queen's Bench in the Province of New Brunswick, according to the domicile elected by the Patentee as aforesaid: which Courts shall adjudicate on the matter and decide as to costs. The Patent and documents aforesaid shall then be held as of record in such Court, so that a Writ of *Scire Facias* under the Seal of the Court grounded upon such record may issue for the repeal of the Patent, for legal cause as aforesaid, if upon proceedings had upon the Writ in accordance with the meaning of this Act the Patent be adjudged to be void.

Process for impeachment of patent.

**30.** A certificate of the judgment voiding any Patent shall, at the request of any person or party filing it to be of record in the Patent Office, be entered on the margin of the enrolment of the Patent in the Office of the Commissioner, and the Patent shall thereupon be and be held to have been void and of no effect, unless and until the judgment be reversed on appeal as hereinafter provided.

Certificate of judgment voiding patent to be entered.

**31.** The judgment declaring any Patent void shall be subject to appeal to any Court of Appeal having appellate jurisdiction in other cases over the Court by which the same was rendered.

Judgment to be subject to appeal.

#### PATENTS ISSUED UNDER FORMER LAWS.

**32.** All Patents issued under any Act of the Legislature of the late Province of Canada, or of Nova Scotia or of New Brunswick, and all Patents issued for the Provinces of Ontario and Quebec under the Act of the late Province of Canada, to the date of the coming into operation of the present Act, shall remain in force for the same term, and for the

Existing Provincial patents to remain in force.

same extent of territory, as if the Act under which they were issued had not been repealed, but subject to the provisions of this Act in so far as applicable to them.

2. And it shall be lawful for the Commissioner, upon the application of the Patentee named in any such Patent, being the inventor or discoverer of the subject matter of the patent and a British subject, or a resident in any Province of Canada for upwards of a year, if the subject matter of the patent has not been known or used nor with the consent of the patentee, on sale in any of the other Provinces of the Dominion, to issue on payment of the proper fees in that behalf a patent under this Act extending such Provincial patent over the whole of the Dominion, subject to the provisions of the seventeenth section; but no patent so issued shall extend beyond the remainder of the term mentioned in the Provincial Patent.

Records of Provincial patent offices to be handed over to Commissioner.

33. All the records of the Patent Offices of the late Province of Canada, and of the Provinces of Ontario and Quebec, of Nova Scotia and New Brunswick, shall be handed over by the officers in charge of them to the Commissioner of Patents of invention or discovery, to form part of the records of the Patent Office for the purposes of this Act.

#### TARIFF OF FEES.

Tariff of fees.

34. The following fees shall be payable, to the Commissioner, before an application for any of the purposes herein-after mentioned shall be entertained, that is to say:

On petition for a Patent for 5 years.....	\$20 00
On petition for extension from 5 to 10 years..	20 00
On petition for extension from 10 to 15 years.	20 00
On lodging a Caveat.....	5 00
On asking to register a judgment <i>pro tanto</i> ....	4 00
On asking to register an assignment.....	2 00
On asking to attach a Disclaimer to a Patent.	4 00
On asking for a copy of Patent with specification.....	4 00
On petition to re-issue a Patent after surrender, and on petition to extend a former patent to the Dominion, the fee shall be at the rate of.....	4 00
for every unexpired year of duration of such Patent.	

On office copies of Documents, not above mentioned, the following charges shall be exacted:

For every single or first folio of certified copy..	\$0 50
For every subsequent hundred words, (fractions from and under fifty being not counted, and over fifty being counted for one hundred).....	

**35.** For every copy of drawings, the party applying shall pay such sum as the Commissioner considers a fair remuneration for time and labor expended thereon by any officer of the Department or person employed to perform such service. Copies of drawings.

**36.** The said fees shall be in full of all services performed under this Act in any such case by the Commissioner or any person employed in the Patent Office, Fees to be in full for all services.

**37.** All fees received under this Act shall be paid over to the Receiver General and form part of the Consolidated Revenue Fund of Canada, except such sums as may be paid for copies of drawings when made by persons not receiving salaries in the Patent Office. Fees to be paid over to Receiver General.

**38.** No fee shall be made the subject of exemption in favor of any person; and no fee, once paid, shall be returned to the person who paid it, except: Of return of fees.

1. When the invention is not susceptible of being patented;

2. When the petition for a Patent is withdrawn;

And in every such case the Commissioner may return one half of the fee paid;

And in the case of withdrawal, a fresh application shall be necessary to revive the claim, as if no proceeding had taken place in the matter.

#### MISCELLANEOUS PROVISIONS.

**39.** An intending applicant for a Patent who has not yet perfected his invention or discovery and is in fear of being despoiled of his idea, may file in the Patent Office a description of his invention or discovery so far, with or without plans, at his own will; and the Commissioner, on reception of the fee hereinbefore prescribed, shall cause the said document to be preserved in secrecy, with the exception of delivering copies of the same whenever required by the said party or by any judicial tribunal—the secrecy of the document to cease when he obtains a Patent for his invention or discovery; and such document shall be called a *caveat*. Provided always that if application shall be made by any other person for a Patent for any invention or discovery with which such *caveat* may in any respect interfere, it shall be the duty of the Commissioner forthwith to give notice by mail, to the person who has filed such *caveat* and such person shall within three months after the date of mailing Intending applicant for patent may file caveat.

the notice, if he would avail himself of the *caveat*, file his petition and take the other steps necessary on an application for patent, and if, in the opinion of the Commissioner the applications are interfering, like proceedings may be had in all respects as are by this Act provided in the case of interfering applications. Provided further that unless the person filing any *caveat*, shall within four years from the filing thereof have made application for a patent, the *caveat* shall be void.

Commissioner  
may object to  
grant a patent  
in certain cases

**40.** The Commissioner may object to grant a Patent in the following cases :

1. When he is of opinion that the alleged invention or discovery is not patentable in law ;

2. When it appears that the invention or discovery is already in the possession of the public with the consent or allowance of the inventor ;

3. When it appears that the invention or discovery has been described in a book or other printed publication before the date of the application or otherwise in the possession of the public ;

4. When it appears that the invention or discovery has already been patented, except, however, when the case is one within the seventh section of this Act or one in which the Commissioner has doubts as to whether the patentee or the applicant is the first inventor or discoverer.

Commissioner  
to notify appli-  
cant and state  
ground of  
objection.

**41.** Whenever the Commissioner objects to grant a Patent as aforesaid, he shall notify the applicant to that effect and shall state the ground or reason therefor with sufficient detail to enable the applicant to answer, if he can, the objection of the Commissioner.

Applicant may  
appeal to  
Governor in  
Council.

**42.** Every applicant who has failed to obtain a Patent by reason of the objection of the Commissioner as aforesaid, may at any time within six months after notice thereof has been addressed to him or his agent, appeal from the decision of the Commissioner to the Governor in Council.

Arbitration in  
case of more  
than one appli-  
cant.

**43.** In cases of interfering applications for any Patent, the same shall be submitted to the arbitration of three skilled persons, one of whom shall be chosen by each of the applicants, and the third person shall be chosen by the Commissioner, or by his Deputy or the person appointed to perform the duty of that office ;—And the decision or award of such Arbitrators, or any two of them, delivered to the Commissioner in writing, and subscribed by them, or any two of them, shall be final as far as respects the granting of the Patent ;

2. If either of the applicants refuses or fails to choose an Arbitrator, when required so to do by the Commissioner, the Patent shall issue to the opposite party;—And when there are more than two interfering applicants, and the parties applying do not all unite in appointing three Arbitrators, the Commissioner or his Deputy, or person appointed to perform the duty of that office, may appoint the three Arbitrators for the purposes aforesaid.

The same.

44. All specifications, drawings, models, disclaimers judgments and other papers, except *caveats*, shall be open to the inspection of the public at the Patent Office, under such regulations as may be adopted in that behalf.

Documents to be open to inspection.

45. Clerical errors happening in the framing or copying of any instrument of the Patent Office, shall not be construed as invalidating the same, but when discovered they may be corrected under the authority of the Commissioner.

Clerical errors not to invalidate.

46. In case any Letters Patent shall be destroyed or lost, others of the like tenor, date and effect may be issued in lieu thereof, on the party paying the fees hereinbefore prescribed for office copies of documents.

Lost or destroyed patent may be replaced.

47. No Letters Patent shall extend to prevent the use of any invention or discovery in any foreign ship or vessel, where such invention or discovery is not so used for the manufacture of any goods to be vended within or exported from Canada.

Use of patented inventions in foreign ships.

48. Every person who before the issuing of a Patent has purchased, constructed or acquired any invention or discovery for which a Patent has been obtained under this Act, shall have the right of using and vending to others, the specific art, machine, manufacture or composition of matter patented, so purchased, constructed or acquired before the issue of the Patent therefor, without being liable to the Patentee or his representatives for so doing; but the Patent shall not be held invalid as regards other persons by reason of such purchase, construction or acquisition or use of the invention or discovery by the person first aforesaid, or by those to whom he may have sold the same, unless the same was purchased, constructed or acquired or used for a longer period than one year before the application for a patent therefor.

Patent not to affect previous purchaser of invention.

49. Every Patentee under this Act, shall stamp, or engrave on each patented article sold or offered for sale by him, the year of the date of the Patent applying to such article, thus: "Patented 1869,"—or as the case may be; and any such

Patented articles to be stamped.

patentee selling or offering for sale any such Patented article not so marked, shall be liable to the punishment of a fine not to exceed one hundred dollars, and, in default of the payment of such fine, to imprisonment not to exceed two months.

Certain offenders to be guilty of a misdemeanor.

**50.** Whosoever writes, paints, prints, moulds, casts, carves, engraves, stamps or otherwise marks upon anything made or sold by him, and for the sole making or selling of which he is not the Patentee, the name or any imitation of the name of any Patentee for the sole making or selling of such thing without the consent of such Patentee—or without the consent of the Patentee writes, paints, prints, moulds, casts, carves, engraves, stamps or otherwise marks upon anything not purchased from the Patentee, the words, "Patent," "Letters Patent," "Queen's Patent," "Patented," or any word or words of like import, with the intent of counterfeiting or imitating the stamp, mark or device of the Patentee, or of deceiving the public and inducing them to believe that the thing in question was made or sold by or with the consent of the Patentee,—shall be deemed to have committed a misdemeanor, and shall on conviction be punished therefor by fine, or by imprisonment, or both, in the discretion of the Court before which the conviction shall be had; but the fine shall not exceed two hundred dollars, nor shall the imprisonment exceed three months.

Making a false entry or copy to be a misdemeanor.

**51.** Any person wilfully making or causing to be made any false entry in any register or book, or any false or altered copy of any document relating to the purposes of this Act, or who shall produce or tender any such false or altered document knowing the same to be such, shall be guilty of a misdemeanor and shall be punished by fine and imprisonment accordingly.

Acts repealed.

**52.** Chapter thirty-four of the Consolidated Statutes of the late Province of Canada, respecting Patents for Inventions,—Chapter one hundred and seventeen of the Revised Statutes of Nova Scotia, (third series),—Chapter one hundred and eighteen of the Revised Statutes of New Brunswick,—and any Act amending any of the said Chapters, or any other Act, are hereby repealed, in so far as they or any of them may be inconsistent with this Act, or make any provision in any matter provided for by this Act, except only as respects all rights acquired and penalties or liabilities incurred under the said laws or any of them, before the coming into force of this Act.

Short title.

**53.** When citing this Act it shall be sufficient to call it "The Patent Act of 1869."

Commencement.

**54.** This Act shall commence and take effect on the first day of July, 1869.

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